

1 UNITED STATES DISTRICT COURT

2 DISTRICT OF MASSACHUSETTS (Boston)

3 No. 1:22-cv-11220-WGY

4  
5 CITY OF FORT LAUDERDALE POLICE AND  
6 FIREFIGHTERS' RETIREMENT SYSTEM, et al,  
Plaintiffs

7 vs.

8  
9 PEGASYSTEMS, INC., et al,  
10 Defendants

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12  
13 For Hearing Before:  
14 Judge William G. Young

15 Fairness Hearing

16  
17 United States District Court  
18 District of Massachusetts (Boston)  
19 One Courthouse Way  
20 Boston, Massachusetts 02210  
21 Thursday, September 19, 2024

22 \*\*\*\*\*

23 REPORTER: RICHARD H. ROMANOW, RPR  
24 Official Court Reporter  
25 United States District Court  
One Courthouse Way, Room 5510, Boston, MA 02210  
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For Defendants

1 P R O C E E D I N G S

2 (Begins, 2:00 p.m.)

3 THE COURT: Good afternoon. Would counsel please  
4 identify themselves. Well let's call the case first.

5 THE CLERK: Now hearing Civil Matter 22-11220,  
6 City of Fort Lauderdale Police And Firefighters versus  
7 Pegasystems.

8 MR. JOHNSON: Good afternoon, your Honor, Chad  
9 Johnson, of Robbins Geller, on behalf of the lead  
10 plaintiffs.

11 MS. GUSIKOFF-STEWART: Good afternoon, your Honor,  
12 Ellen Gusikoff-Stewart, of Robbins Geller, on behalf of  
13 the lead plaintiffs.

14 MR. HESS-MAHAN: Good afternoon, your Honor,  
15 Theodore Hess-Mahan on behalf of the lead plaintiffs.

16 THE COURT: Good afternoon.

17 MR. HALSTON: Good afternoon, your Honor, Dan  
18 Halston, from Wilmer Hale, on behalf of the defendants,  
19 and with me is --

20 MS. SMITH: Robert Smith, also of Wilmer Hale,  
21 your Honor, for the defendants.

22 THE COURT: Good afternoon to you all.

23 This is the fairness hearing, properly noticed.

24 Does anyone appear in opposition to the proposed  
25 settlement?

1 (Silence.)

2 THE COURT: I hear none. We'll ask again before  
3 we close the hearing.

4 I have reviewed all of this and I am satisfied in  
5 the main with it. I want to inquire about attorneys  
6 fees, as is my practice.

7 So the gross settlement is \$35 million, correct?

8 MR. JOHNSON: That is correct, your Honor.

9 THE COURT: Okay. Tell me where the money goes?

10 MR. JOHNSON: So, your Honor, start at the gross  
11 amount, plus interest that has accrued. There will be  
12 certainly some expenses associated with the claims  
13 administration process.

14 THE COURT: All right.

15 MR. JOHNSON: And then we have requested fees of  
16 30 percent --

17 THE COURT: No, I understand that. Put that to  
18 the end.

19 MR. JOHNSON: All right.

20 THE COURT: Where does the money go?

21 MR. JOHNSON: And do you mean the fees or the, um  
22 --

23 THE COURT: Here's my problem. The theory of a  
24 payment to you people of 30 percent is based on the  
25 common-fund analysis of litigation, and the support for

1     it and -- I have no problem with a 30 percent fee, is  
2     that you have created a fund which but for your efforts  
3     would not have existed. That appears to be correct. So  
4     the -- but the fund that you've created necessarily is  
5     reduced by the cost of administration, to get the money  
6     out, it's reduced by your expenses, because you had to  
7     expend those funds to create what's left for the  
8     beneficiary, and so we subtract those two things. The,  
9     um -- the awards to named plaintiffs I don't think  
10    should be subtracted because named plaintiffs bear a  
11    function in the litigation process. So we don't  
12    subtract that. But subtract these two elements that I  
13    mentioned.

14           So where does the rest of it go before we get to  
15    consider attorneys fees?

16           MR. JOHNSON: Your Honor, the totality of it, and  
17    I'm -- I want to make sure I'm answering your question.  
18    The totality of the fund is an escrow account.

19           THE COURT: Yeah.

20           MR. JOHNSON: Subtracting the amounts your Honor  
21    noted, the claims process is what will result in the  
22    funds going out to class members.

23           THE COURT: Okay. And here's my problem.

24           MR. JOHNSON: Okay.

25           THE COURT: Studies show that the take-up is about

1 20 percent. So those are the people who get paid. What  
2 happens to the rest of it?

3 MR. JOHNSON: Well, your Honor, generally, um --  
4 and I don't think this will be any exception, whatever  
5 the percentage of claimants may put in a claim, let say  
6 it's 20 percent, hypothetically, um, almost without  
7 exception -- and again I don't think this will be an  
8 exceptional case as far as what we're talking about is  
9 concerned, the amount that goes out to them will not  
10 exceed the size of their claim. And so, yes, only those  
11 who submit a claim will receive a portion of the  
12 settlement fund. But they will not, for instance,  
13 receive a windfall.

14 THE COURT: No. No. All right. And how much is  
15 that going to be, if there was a 20 percent take-up?

16 MR. JOHNSON: In total?

17 THE COURT: Yes. We don't know today, do we?

18 MR. JOHNSON: Well what we can know is pretty  
19 close to the actual number, your Honor, and there's not  
20 much that's frankly in doubt, it's more a matter of  
21 interest or claims costs.

22 THE COURT: Well you're answering my question. Go  
23 ahead.

24 MR. JOHNSON: All right. So you have claims --  
25 costs associated with the claims process, those have not

1 all been incurred.

2 THE COURT: I fully understand. All right.

3 MR. JOHNSON: And then you have interest, which is  
4 moving the fund in the other direction.

5 THE COURT: All right.

6 MR. JOHNSON: And then you have the request of the  
7 fees and expenses. Yes, right. Right.

8 THE COURT: Well I'm going to subtract the  
9 expenses because you attorneys had to incur those  
10 expenses in order for the funds to be created. So we  
11 subtract that. So once we've subcontracted that,  
12 roughly half a million, then that's less -- what I may  
13 set aside for attorneys fees, that's what's available  
14 for the people and institutions that have been injured.

15 If there's a 20-percent take-up, and what we've  
16 subtracted from 35 million takes us down to 30 million,  
17 and there's only a 20-percent take-up, um, what's -- you  
18 know, a 33 percent take-up would be 10 million, um, we  
19 pay out \$10 million that's left? What happens if --  
20 putting aside your, um, what you want, what happens to  
21 the rest of it?

22 MR. JOHNSON: Would it be all right if we used  
23 round numbers just because we're talking about  
24 hypotheticals?

25 THE COURT: Right.

1 MR. JOHNSON: So let's suppose that we have \$20  
2 million available to distribute among class members --

3 THE COURT: Right.

4 MR. JOHNSON: -- round numbers, yes, the \$20  
5 million would go out to those claimants who put forward  
6 claims --

7 THE COURT: And my hypothesis is there isn't  
8 enough -- no, strike that, there isn't enough of a take-  
9 up to exhaust that \$20 million?

10 MR. JOHNSON: That's where there's, um, I think a  
11 factual disconnect, your Honor, in that the -- the size  
12 of the claims is going to -- so even with 20 percent  
13 making claims, they will have, um, asserted claims that  
14 will be more than \$20 million.

15 THE COURT: All right, I follow. All right, let  
16 me say it back to you and I'm afraid that I might be  
17 inarticulate.

18 The goal of the Court and what I conceive the duty  
19 of the Court to be, because I have to give an  
20 independent analysis here, is to assure that an  
21 appropriate amount of the real money caused to be put  
22 into the common fund goes to the claimants. So I think  
23 I can articulate this correctly.

24 Out of the \$35 million, I want the administration  
25 costs subtracted. I want the attorneys fees subtracted.



1 I want a representation that all the -- the 30 percent,  
2 I've said I want two things subtracted.

3 I approve -- I really have no quarrel at all with  
4 the fine work that the plaintiffs' counsel has done  
5 here, the 30 percent is 30 percent of what remains. So  
6 you get 30 percent of what remains, the class individual  
7 award, I accept, they're subtracted, and do I have your  
8 representation that the remainder, every penny of it,  
9 goes to the claimants?

10 MR. JOHNSON: Yes, your Honor, with one tiny  
11 asterisk, which is hypothetical itself.

12 THE COURT: Yeah.

13 MR. JOHNSON: If, for instance, after the initial  
14 distribution, if there's a secondary distribution, which  
15 is common, if after that there's a de minimis amount, we  
16 would likely come back to the Court and ask for your  
17 permission if that could be donated to an appropriate  
18 organization or something else that would be subject to  
19 the Court's approval, but never is any of this coming to  
20 us or to some other place, and that's why the asterisk  
21 is very very small.

22 THE COURT: I fully accept that. And on the basis  
23 of that representation, I approve the settlement, the  
24 attorneys fees, the individual fees. But you'll  
25 subtract those two elements as I have delineated them.

1 Correct?

2 MR. JOHNSON: Yes, your Honor. Although I will  
3 say -- well we'll do whatever the Court directs. But  
4 subtracting the claims fees first is challenging because  
5 they haven't been incurred.

6 THE COURT: Well it seems to me that, um, you seem  
7 to have this well in hand and can make proper estimates  
8 of what you do from the escrow fund. None of this in  
9 any way impugns counsel, it just seems not to accomplish  
10 the genius of Rule 23 if I just look at the gross  
11 amount, say 30 percent is a not an excessive number,  
12 when in fact the fund available for the victims is  
13 considerably less than that, because of whatever reason,  
14 that the lack of take-up. But I think we understand  
15 each other and I -- um, you can comply with the Court's  
16 order as I've explained it here. Correct?

17 MR. JOHNSON: I think so, your Honor. And, um, as  
18 I understand it, we will make, um, based on our  
19 extensive experience, an estimate of those claims costs  
20 and take that off of the top along with our actual  
21 out-of-pocket expenses --

22 THE COURT: That's correct.

23 MR. JOHNSON: -- and then from there a 30 percent  
24 --

25 THE COURT: And that is likewise correct. And

1     should those estimates -- as you stand in a fiduciary  
2     position to your clients and as you have represented to  
3     the Court, if those estimates should prove inaccurate,  
4     you'll make appropriate adjustments.

5           MR. JOHNSON: Certainly, your Honor, and that's  
6     why we will estimate in favor of the class and not in  
7     our own favor. And, um, I want to make sure I  
8     understand the, um, way we should, um, deal with the  
9     amounts for the lead plaintiffs. You know we're talking  
10    about the \$2,000, the \$2,000 and 9-plus thousand?

11           THE COURT: Right.

12           MR. JOHNSON: Those should also come off the top,  
13    your Honor?

14           THE COURT: No, it wouldn't come off the top.

15           MR. JOHNSON: Okay.

16           THE COURT: They, um -- no.

17           MR. JOHNSON: Okay.

18           THE COURT: They -- the only things that should --  
19    the 30 percent is against this, the settlement amount  
20    less the administration expenses, not yet entirely  
21    known, and less attorneys costs, \$400 and sum, it's  
22    almost half a million dollars. What's left is available  
23    to be distributed to the class. The 30 percent can be  
24    calculated against that recognizing that individual-  
25    named class members will get more, because they have

1 contributed to the success. That should not reduce the  
2 30 percent that goes to the attorneys because they have  
3 contributed especially to the success. The remainder,  
4 in its entirety, going to the class.

5 Have I now stated it in an intelligible fashion?

6 MR. JOHNSON: Yes, your Honor.

7 If you could just give me 2 seconds to confer with  
8 my partner who is the real expert in this matter.

9 THE COURT: I will.

10 But I'll just ask Mr. Halston, um -- and this  
11 really is not directly to you. You get the benefits of  
12 the releases having paid the funds into the escrow  
13 account, so if you think I've misstated something, feel  
14 free.

15 MR. HALSTON: No, your Honor, I don't. And I  
16 think the colloquy at the end I think satisfied your  
17 Honor that even though it's 20 percent, there might be  
18 another distribution such that the money will still be  
19 made whole to the debt, to the class at that point.

20 THE COURT: Right, I want the class to get an  
21 appropriate portion. That's it.

22 All right.

23 MR. JOHNSON: We understand and are happy to  
24 proceed as directed, your Honor.

25 THE COURT: So subject to this colloquy, um, all

1     these -- I'll ask one counsel for the next hearing, but,  
2     um, does anyone on this case, 22 Civil 11220, In re  
3     Pegasystems Securities Litigation, is anyone here to  
4     object to the settlement as the Court has decreed it?

5             (Silence.)

6             THE COURT: I hear no objection. That's the order  
7     of the Court.

8             Is there anything else before we recess?

9             MR. JOHNSON: Only a question, your Honor, as to  
10     whether the Court would want us to submit a proposed  
11     order for the Court's consideration to effectuate this?

12             THE COURT: Well in effect I think I'm doing that,  
13     but, um --

14             MR. JOHNSON: If not, so be it. I've just -- it's  
15     a question.

16             THE COURT: No. No, I think this discussion is  
17     sufficient. We're dealing with competent and highly-  
18     ethical counsel and I have an objective basis in the  
19     Court Reporter's notes to check against. Everything  
20     I've said is with the highest respect, I'm trying to  
21     discharge the function as I -- of the judiciary as I  
22     think it should be discharged.

23             MR. JOHNSON: Thank you.

24             THE COURT: That's the order of the Court. Thank  
25     you all.

1 MR. JOHNSON: Thank you, your Honor.

2 MS. GUSIKOFF: Thank you, your Honor.

3 THE COURT: The settlement is approved pursuant to  
4 this discussion.

5 (Ends, 2:15 p.m.)

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C E R T I F I C A T E

I, RICHARD H. ROMANOW, OFFICIAL COURT REPORTER,  
do hereby certify that the foregoing record is a true  
and accurate transcription of my stenographic notes,  
before Judge William G. Young, on Thursday, September  
19, 2024, to the best of my skill and ability.

/s/ Richard H. Romanow 09-25-24

\_\_\_\_\_  
RICHARD H. ROMANOW Date